

**RESOLUTION NO. \_\_\_\_/HA\_\_\_\_**

**A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AND THE CITY OF MILPITAS HOUSING AUTHORITY AUTHORIZING THE EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE MILPITAS MUNICIPAL FINANCING AUTHORITY**

**WHEREAS**, the City of Milpitas (the "City") and the City of Milpitas Housing Authority (the "Housing Authority") desire to create a joint exercise of powers authority under Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act") to be known as the "Milpitas Municipal Financing Authority" (the "JPA"); and

**WHEREAS**, there has been presented to this meeting a form of Joint Exercise of Powers Agreement (the "JPA Agreement"), by and between the City and the Housing Authority, forming the JPA; and

**WHEREAS**, under California law and the JPA Agreement, the JPA will be a public entity separate and apart from its members, and the debts, liabilities and obligations of the Authority will not be the debts, liabilities or obligations of its members or of its board members.

**NOW, THEREFORE**, the City Council of the City of Milpitas and the Commission of the Milpitas Housing Authority hereby find, determine, and resolve as follows:

Section 1. Approval of JPA Agreement. The JPA Agreement, in substantially the form placed on file with the Secretary, is hereby approved. The Chair and the Executive Director of the Housing Authority (each, a "Designated Officer"), each acting alone, are hereby authorized and directed, for and on behalf of the Housing Authority, to execute and deliver the JPA Agreement, in substantially said form, with such changes and insertions therein and the Designated Officers, with the advice of counsel, may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. Official Actions and Filings. The Designated Officers are hereby authorized and directed, for and on behalf of the Housing Authority, to take any and all other actions consistent with the purposes of this Resolution.

The firm of Jones Hall, A Professional Law Corporation, as bond counsel to the City, is hereby authorized and directed to cause to be prepared, executed and filed any and all reports, statements and other documents as may be required in connection with the execution of the JPA Agreement.

Section 3. Effective Date. This Resolution shall take effect from and after the date of its adoption.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk/Authority Secretary

\_\_\_\_\_  
Jose S. Esteves, Mayor/Authority First Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney/Authority  
General Counsel

**JOINT EXERCISE OF POWERS AGREEMENT**  
**MILPITAS MUNICIPAL FINANCING AUTHORITY**

THIS JOINT EXERCISE OF POWERS AGREEMENT (the "Agreement"), dated as of March 01, 2016, is between the CITY OF MILPITAS, a municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City"), and the CITY OF MILPITAS HOUSING AUTHORITY, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "Housing Authority").

*B A C K G R O U N D :*

1. The City and the Housing Authority desire to enter into this agreement to form a joint exercise of powers authority under Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act") in order to assist in the financing and refinancing of certain public programs and projects, and assist in the financing and refinancing of public capital improvements, as defined in the Act, for the benefit of the City and the Housing Authority.

*A G R E E M E N T :*

For and in consideration of the premises and the material covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

**Section 1. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1 have the meanings herein specified.

"Act" means Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as it may be further amended from time to time, creating the Authority.

"Authority" means the Milpitas Municipal Financing Authority created by this Agreement.

"Board" means the governing board of the Authority.

"Bonds" means bonds and any other evidence of indebtedness of the Authority duly authorized and issued by the Authority.

"Brown Act" means the Ralph M. Brown Act (Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California), or any successor legislation hereinafter enacted.

"City" means the City of Milpitas, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California.

"Housing Authority" means the City of Milpitas Housing Authority, a public body, corporate and politic, duly organized and existing under the laws of the State of California.

“Member” or “Members” means the members of the Authority from time to time as may be modified in accordance with this Agreement. As of the date of this Agreement, the Members are the City and the Housing Authority.

**Section 2. Purpose.** This agreement is entered into under the Act for the purpose of assisting in the financing and refinancing of certain public programs and projects of the Members, and assisting in the financing and refinancing of public capital improvements, as defined in the Act, for the benefit of the Members by exercising the powers of the Authority described in Section 5 and conferred by the Act.

**Section 3. Term.** This Agreement takes effect as of the date hereof and continues in full force and effect until terminated by the Members, as evidenced by a resolution adopted by the governing board of each respective Member. However, in no event shall this Agreement terminate while any Bonds or other obligations of the Authority remain outstanding under the terms of any indenture, trust agreement, contract, agreement, lease, sublease or other instrument under which such Bonds are issued or other obligations are incurred.

The Authority shall cause all records regarding its formation, existence, any Bonds issued by it, obligations incurred by it and proceedings pertaining to its termination to be retained for at least six years following termination of the Authority or final payment of any Bonds, whichever is later.

#### **Section 4. The Authority.**

(a) Status of Authority. There is hereby formed under the Act an agency and public entity to be known as the “Milpitas Municipal Financing Authority.” As provided in the Act, the Authority is a public entity separate from the Members. The debts, liabilities and obligations of the Authority do not and shall not constitute debts, liabilities or obligations of the Members.

Within 30 days after the effective date of this Agreement, and of any further amendment hereto in the future, the Authority will cause a notice of this Agreement or any future amendment to be prepared and filed with the office of the California Secretary of State in the manner set forth in Section 6503.5 of the Act, as amended.

(b) Governing Board. The Authority shall be administered by the Board whose members shall be, at all times, the members of the City Council of the City from time to time. The term of office as a member of the Board will terminate when such member of the Board ceases to be a member of the City Council of the City; and the successor to such member of the City Council of the City will become a member of the Board upon assuming such office.

Members of the Board will not receive any compensation for serving as such, but are entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Board determines that such expenses will be reimbursed, and unencumbered funds are available for that purpose.

#### **(c) Meetings of Board.**

(i) Time and Place. The time and place for holding Board meetings shall be established, and may be changed at any time, by resolution of the Board. Initially, meetings shall be held as follows:

(1) The Board shall conduct regular meetings on the same date, at the same time and at the same location as the regular meetings of the City Council of the City. Such regular meetings may occur either during or after the regular meetings of the City Council of the City, but may not commence earlier than the starting time for the regular meetings of the City Council of the City. If the Secretary does not post an agenda for a regular meeting pursuant to the Brown Act, then such failure to post shall be deemed to be a determination by the Chair that no items required discussion and, therefore, that the regular meeting has been cancelled, except as otherwise provided in the Brown Act.

(2) The Board may hold special meetings at any time and from time to time in accordance with law.

(ii) Legal Notice. All meetings of the Board will be called, noticed, held and conducted subject to the provisions of the Brown Act.

(iii) Minutes. The Board will cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to the Members.

(iv) Quorum. A majority of the members of the Board constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time.

(d) Officers; Duties; Bonds. The Officers of the Authority shall be the Chair, Vice-Chair, Executive Director, Secretary and Treasurer.

(i) The Chair shall be the person serving as the mayor of the City; the Vice-Chair shall be the person serving as the Vice Mayor of the City; the Executive Director shall be the person serving as the City Manager of the City; and the Secretary shall be the person serving as the City Clerk. The officers shall perform the duties normal to their respective offices. The Chair or the Executive Director shall sign all contracts on behalf of the Authority, and shall perform such other duties as may be imposed by the Board. The Vice Chair shall act, sign contracts, and perform all of the Chair's duties in the absence of the Chair. The Secretary shall perform such duties as may be imposed by the Board and cause a copy of this Agreement to be filed with the California Secretary of State pursuant to the Act. These officers shall have such additional powers and duties as may be determined by the Board from time to time by resolution.

(ii) Pursuant to Section 6505.6 of the Act, the chief financial officer of the City is hereby designated as the Treasurer of the Authority. The Treasurer shall be the depository, shall have the duties and obligations set forth in section 6505 and 6505.5 of the Act and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority. Pursuant to section 6505.1 of the Act, the Treasurer shall have charge of, handle and have access to all accounts, funds, and money of the Authority and all records of the Authority relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Authority.

(iii) So long as required by Section 6505 and Section 6505.5 of the Act, the Treasurer shall prepare or cause to be prepared a special audit as required under Section 6505 of the Act every year during the term of this Agreement.

(iv) The City shall determine the charges, if any, to be made against the Authority for the services of the Treasurer.

(v) The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

(vi) All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits which apply to the activities of officers, agents or employees of the Members when performing their respective functions within the territorial limits of their respective Member, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this Agreement.

(vii) None of the officers, agents or employees, if any, directly employed by the Authority shall be deemed, by reason of their employment by the Authority, to be employed by any Member or, by reason of their employment by the Authority, to be subject to any of the requirements of any Member.

**Section 5. Powers.** The Authority shall have the following powers: (a) all powers separately conferred upon joint exercise of powers authorities under California law, including without limitation the Act, and (b) any and all powers that are common powers of the Members. All such powers, whether separately conferred by law or common to the Members, are specified as powers of the Authority except any such powers that are specifically prohibited to the Authority by law. The Authority's exercise of its powers is subject to the restrictions upon the manner of exercising the powers of the City.

The Authority is authorized, in its own name, to do all acts necessary for the exercise of said powers. Notwithstanding the foregoing, the Authority has any additional powers conferred under the Act or under applicable law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2.

**Section 6. Fiscal Year.** Unless and until changed by resolution of the Board, the fiscal year of the Authority is the period from July 1 of each year to and including the following June 30.

**Section 7. Disposition of Assets.** Upon termination of this Agreement under Section 3, any surplus money in possession of the Authority or on deposit in any fund or account of the Authority will be returned in proportion to any contributions made as required by Section 6512 of the Act. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority. After rescission or termination of this Agreement under Section 3, all property of the Authority, both real and personal, shall be distributed to the City, subject to Section 8.

**Section 8. Contributions and Advances.** Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the Members for any

of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance made in respect of a revenue-producing facility shall be made subject to repayment, and will be repaid, in the manner agreed upon by the respective Member making the contribution and the Authority as provided by 6512.1 of the Act. It is mutually understood and agreed that no Member has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though either may do so. Any member may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority.

**Section 9. *Conflict of Interest Code.*** The Authority hereby adopts the conflict of interest code of the City as the conflict of interest code governing the Authority.

**Section 10. *Breach; Remedies.*** If any Member defaults in any covenant contained in this Agreement, such default will not excuse any other Member from fulfilling its obligations under this Agreement, and each other Member will continue to be liable for the payment of contributions and the performance of all conditions herein contained.

The Members hereby declare that this Agreement is entered into for the benefit of the Authority, and the Members hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the Members hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

**Section 11. *Notices.*** Notices and other communications hereunder to the Members shall be sufficient if delivered to the clerk or secretary of the governing body of each Member.

**Section 12. *Addition of Member.***

(a) Any public agency may be added as a party to this Agreement, and become a Member, by filing with the Board a certified copy of a resolution of the governing body of such public agency whereby it agrees to the provisions of this Agreement and requests to become a Member. The Board may accept or reject any such proposal in its sole discretion, and if accepted, such public agency shall become a Member when (i) its admission is approved by a vote of a majority of the Board voting on the matter and (ii) such public agency agrees to share public agency's future share of the costs and expenses incurred by the Authority in the course of its activities.

(b) Upon satisfaction of the provisions of subsection (a) above, such public agency shall be a Member for all purposes of this Agreement. The effectiveness of such membership shall not constitute an amendment or modification of this Agreement.

**Section 13. *Withdrawal or Exclusion of a Member.***

(a) Any Member may withdraw from the Authority by filing with the Board a certified copy of a resolution of the governing body of the Member expressing its desire to so withdraw, whereupon the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate.

Any Member that is dissolved or ceases to exist for any reason shall be deemed to have withdrawn from this Agreement as of the date of such Member's dissolution.

The withdrawal of a Member shall not affect any obligations of such Member under any contract between the withdrawing Member and the Authority.

(b) Any Member that has defaulted under a contract with the Authority may have its rights under this Agreement terminated and may be excluded from participating in the Authority by a vote of a majority of the members of the Board of Directors voting on the matter (excluding from voting members of the Board of Directors, if any, representing the defaulting Member). Any excluded Member shall continue to be liable for its obligations under any contract with the Authority.

(c) No withdrawal from membership or exclusion from participation under this Section shall constitute an amendment or modification of this Agreement.

**Section 14. Severability.** If any part, term, or provision of this Agreement is decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof will not be affected thereby.

**Section 15. Successors; Assignment.** This Agreement is binding on and inures to the benefit of the successors of the Members. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the written consent of the other Members.

**Section 16. Amendment.** This Agreement may be amended at any time by supplemental agreement executed by all of the Members. However, any such supplemental agreement is subject to any restrictions contained in any documents related to outstanding Bonds or other obligations of the Authority.

**Section 17. Waiver of Personal Liability.** No member, officer or employee of the Authority or any Member is individually or personally liable for any Bonds or any claims, losses, damages, costs, injury and liability of every kind, nature and description arising from the actions of the Authority or the actions undertaken under this Agreement.

To the full extent permitted by law, the Board shall provide for indemnification by the Authority of any person who is or was a member of the Board, or an officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member of the Board, or an officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in the course and scope of his or her office, employment or agency. In the case of a criminal proceeding, the Board may provide for indemnification and defense of a member of the Board, or an officer, employee or other agent of the Authority to the extent permitted by law.

**Section 18. Miscellaneous.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Where reference is made to duties to be performed for the Authority by a public official or employee, such duties may be performed by that person's duly authorized deputy or assistant. Where reference is made to actions to be taken by a Member, such action may be exercised through the officers, staff or employees of that Member in the manner provided by law.

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

This Agreement is the complete and exclusive statement of the agreement among the parties with respect to the subject matter hereof, which supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

**CITY OF MILPITAS**

By \_\_\_\_\_  
Jose Esteves, Mayor

Attest:

\_\_\_\_\_  
Mary Lavelle, City Clerk

**CITY OF MILPITAS HOUSING  
AUTHORITY**

By \_\_\_\_\_  
Jose Esteves, First Chair

Attest:

\_\_\_\_\_  
Mary Lavelle, Authority Secretary

**Approved As To Form:**

\_\_\_\_\_  
Christopher J. Diaz  
City Attorney/Authority Counsel